

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 22, 2016 at 2:00 P.M.

1. [15-22417](#)-C-13 GARY EFHAN MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso 2-10-16 [[43](#)]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reason:

1. The months paid in stated in the proposed plan differ from the

Trustee's records.

The Trustee does not have an objection if to the proposed plan if corrected in the order confirming.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

2. [10-35624](#)-C-13 ERIK/RENEE SUNDQUIST
[14-2278](#) JRD-1
SUNDQUIST ET AL V. BANK OF
AMERICA, N.A. ET AL

MOTION IN LIMINE TO EXCLUDE
IRRELEVANT EVIDENCE
2-19-16 [[151](#)]

Final Ruling: No appearance at the **March 22, 2016** hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on **February 19, 2016**. 28 days' notice is required.

The Motion in Limine to Exclude Irrelevant Evidence has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion in Limine is continued to March 23, 2016 at 1:30 p.m.

Defendants Bank of America, N.A. and ReconTrust Company in adversary proceeding case no. 14-02278 seeks to exclude all evidence that is not relevant to plaintiffs' existing claims. As this motion pertains to adversary proceeding, this matter would be best heard on the court's status conference hearing calendar. Accordingly, the hearing for the Motion is continued to March 23, 2016 at 1:30 p.m.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to March 23, 2016 at 1:30 p.m.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The proposed plan is filed as an exhibit rather than a standalone document.
2. The proposed modified plan no longer provides for secured creditor Sacramento County Utilities in Class 2.

The Trustee does not have an objection if to the proposed plan if corrected in the order confirming.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

4. [12-32446](#)-C-13 ANDY DINH AND KRISTY
PGM-1 NGUYEN
Peter Macaluso

MOTION TO MODIFY PLAN
2-11-16 [[51](#)]

Final Ruling: No appearance at the **March 22, 2016** hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on **February 11, 2016**. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtors having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on February 11, 2016
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 1, 2016. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Jason and Shelly Belloti, the **Chapter 13 Debtors**, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 130. Here Movant proposes to sell the "Property" described as follows:

3906 Southpark Place, Auburn, California

The proposed purchaser of the Property are Bert and Kayla Vanderlans and the terms of the sale are:

- Sale price: \$277,750.00
- Five percent (5%) real estate commission: \$13,887.50
- Other closing costs: \$4,325.00

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Discussion

At the time of the filing the property had an approximate value of \$299,000.00 with a single deed of trust owing to Loan Depot in the approximate sum of \$231,027.07. The Debtors will receive approximately \$18,640.50 from the sale, which is less than their claimed exemption amount (\$67,972.93).

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Jason and Shelly Belloti, the **Chapter 13 Debtors**, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that, the **Chapter 13 Debtors**, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Bert and Kayla Vanderlans or nominee ("Buyer"), the Property commonly known as 3906 Southpark Place, Auburn, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$277,750.00 on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 62, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, **real estate commissions, prorated real property taxes and assessments, liens**, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The **Chapter 13 Debtors** be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The **Chapter 13 Debtors** be and hereby are authorized to pay a real estate broker's commission in an amount equal to **five percent (5%)** of the actual purchase price upon consummation of the sale. The **five percent (5%)** commission shall be paid in equal shares to Re/Max Gold and Better Homes and Gardens-Reliance Partners.

Final Ruling: No appearance at the **March 22, 2016** hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on **February 12, 2016**. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtors having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on February 12, 2016
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the

proposed order to the court.

7. [15-28562](#)-C-13 ELMER/ALMA CRESPIN
PGM-2 Peter Macaluso

CONTINUED MOTION TO VALUE
COLLATERAL OF LONG BEACH
MORTGAGE
12-29-15 [[28](#)]

Also #8

Tentative Ruling: The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 29, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1855 Griffin Drive, Vallejo, California. The Debtors seek to value the property at a fair market value of \$200,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$221,896.68. The second deed of trust, which Debtors assert in their motion is held by Long Beach Mortgage serviced by Madison Management Servicing, LLC, secures a loan with a balance of approximately \$70,045.33. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

Brio Ventures, LLC, Creditor, responds to Debtors' motion asserting rights, title, and interest in the second deed of trust, the subject of the instant motion. Creditor states that the second deed of trust was transferred from Long Beach Mortgage Company to Mortgage Electronic Registration Systems, Inc., by way of assignment of deed of trust. Thereafter, all rights, title, and interest in the note and deed of trust was transferred from Mortgage Electronic Registration Systems, Inc. to Trinity Financial Services, LLC. Thereafter, all rights, title, and interest in the note and deed of trust was transferred from Trinity Financial, LLC to Brio Ventures, LLC by assignment of deed of trust.

Creditor objects that Long Beach Mortgage, who no longer holds the second position mortgage, was the named entity in the motion. Creditor states that as such, the motion should be denied. Next, Creditor requests that as the actual holder of the deed of trust in question, a 45 day continuance to allow Creditor to conduct a full appraisal of the property.

DEBTORS' RESPONSE

Debtor responds, stating that in filing their opposition, Brio Ventures, LLC, has opted to waive any contention of insufficient service, and state no opposition to continuing this matter to allow Creditor an opportunity to obtain an appraisal.

Discussion

At the hearing on January 26, 2016, the court continued the matter to allow time for an appraisal.

The docket does not reflect that Creditor has submitted an appraisal. This indicates that Creditor no longer disputes Debtor's valuation.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Brio Ventures, LLC secured by a second deed of trust recorded against the real property commonly known as 1855 Griffin Drive, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$200,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

8. [15-28562](#)-C-13 ELMER/ALMA CRESPIN
PGM-1 Peter Macaluso

CONTINUED MOTION TO CONFIRM
PLAN

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<p>The court's decision is to continue the Motion to Confirm the Plan is denied.</p>

Chapter 13 Trustee, David Cusick, opposes the instant motion on the basis that:

1. Debtor is \$1,530 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,530 is due February 25, 2015. The case was filed on November 3, 2015, and Debtor has paid \$1,530 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Long Beach Mortgage. The motion was set for hearing on January 26, 2016, and was continued to March 22, 2016.

DEBTORS' RESPONSE

Debtors respond, stating that they have cured the delinquency, and the Motion to Value was continued to March 22, 2016 at 2:00 p.m.

CREDITOR'S OPPOSITION

Brio Ventures, LLC opposes confirmation of the Plan on the basis that

Movant holds a junior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

DISCUSSION

At the hearing on February 9, 2016, the court continued the matter so that it could be decided on the same hearing date as the Motion to Value Collateral of Brio Ventures, LLC upon which the plan relies. Subsequently, Brio Ventures, LLC filed an opposition to the Motion to Confirm Plan.

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. The court has granted the Motion to Value Collateral of Brio Ventures, LLC. Accordingly, Brio Ventures, LLC no longer holds a claim secured by the debtor's principal residence but rather a general unsecured claim. Therefore the argument upon which Creditor's objection is based falls flat.

As to the Trustee's objection based on delinquency, the court is uncertain as to whether the Debtor is current on plan payments. Accordingly, the court cannot confirm the plan at this time.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied.

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, **Debtor's Attorney, Chapter 13 Trustee,** parties requesting special notice, and Office of the United States Trustee on **March 8, 2016**. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Value secured claim of American Honda Finance Corporation, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2015 Honda Civic. The Debtor seeks to value the property at a replacement value of \$25,739.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$31,011.00. When debtor purchased the subject vehicle, she traded in a 2013 Honda Civic Hybrid with a trade-in value of \$13,000.00 and a credit or lease balance of \$18,317.96 according to the terms of the 2015 lease contract. The amount financed was \$30,467.00. The negative equity is

17.00%. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$25,739.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of American Honda Finance Corporation secured by a purchase-money loan recorded against a 2015 Honda Civic is determined to be a secured claim in the amount of \$25,739.00, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$25,739.00.

Also #11

Final Ruling: No appearance at the March 22, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2016. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on February 12, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. 28 days' notice is required. This requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Dismiss.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$21,228 to date with the last payment received on January 8, 2016. Trustee shows a total of \$31,944 is due, thus Debtor is delinquent \$10,716 in plan payments. Prior to the hearing on this matter, a payment of \$2,904 will come due. As a result, Debtor will need to pay \$13,620 in order to bring the plan current as of the date of this hearing.

DEBTORS' OPPOSITION

Debtors provide that they have filed a modified plan and motion to modify plan, set for hearing on March 22, 2016.

FEBRUARY 17, 2016 HEARING

The court continued the instant motion be continued until March 22, 2016 in order to be heard in conjunction with the confirmation hearing.

DISCUSSION

The court has granted the motion to modify plan, under which Debtors are no longer in material default. Trustee's only basis for dismissal having been

resolved, this motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

Final Ruling: No appearance at the **March 22, 2016** hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 25, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is unclear of the proposed modified plan payments. The additional provisions of the modified plan lists proposed plan payments as "As of February 1, 2016 (months 1 through 53), the debtor has paid the trustee a total of sixty-six thousand two hundred forty-six dollars (\$66,246). The Chapter 13 Plan payment shall one thousand nine hundred thirty-five dollars (\$1,935) for months 54-60." It is unclear if the Debtors intend monthly plan payments of \$1,935 or if Debtors are proposing a lump sum payments of \$1,935 for months 54-60.
2. There appears to be a discrepancy in the Debtors amended Schedule I and J, and the Declaration filed on 2/3/16. Debtors amended schedule I, listing N/A as income for Debtor 2. Debtors also filed an exhibit

in support of the motion to confirm, which happens to include pay advices for co-debtor. Debtors' declaration states that Mr. Atwood net take home income is \$3,478.50, however Mr. Atwood's net income on schedule I is \$3,333. The declaration goes on further to state that the combined monthly net income is \$4,669.39, however as stated above, schedule I lists this number as \$3,333.

Schedule J lists net monthly income as \$1,935 which coincides with the third modified plan, however, Debtors' declaration in support states "I can afford this payment because my disposable income is one thousand five hundred thirteen dollars (\$1,513). There are numerous discrepancies between Debtors' schedule J and declaration.

DISCUSSION

Trustee's basis for opposition are well-taken. The concerns raised by Trustee raise doubt as to: (1) what the proposed modified plan payments are, and (2) whether Debtors are even able to afford plan payments. The court agrees that Debtors have failed to provide sufficient information to confirm the plan as modified and here proposed. The above factor thus being unclear at this time, the court will not grant the motion or confirm the modified plan as proposed.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Transfer Venue was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on **Chapter 13 Trustee, creditors**, parties requesting special notice, and Office of the United States Trustee on March 8, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Transfer Venue was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Transfer Venue is granted, and the case is transferred to the United States Bankruptcy Court for the Central District of California, .

Debtor, Tiernan Nguyen, moves for an order transferring venue of this chapter 13 case to the venue where Debtor resides under Bankruptcy Rule 1014(a)(2).

Here, the instant chapter 13 case was filed on February 1, 2016. Debtor provides that the purpose of filing this bankruptcy was to save a property located at 7118 Briggs Drive, Sacramento, California, who are now deceased. Debtor resides at 748 Forest Park Blvd., Apt. 223, Oxnard, California. Due to some miscommunication between Debtor and Debtor's attorney, Debtor's attorney filed the bankruptcy case in the Northern District of California, not understanding that Debtor spends the majority of his time residing at the Oxnard, California property.

Bankruptcy Rule 1014(a)(2) provides that "If a petition is filed in an improper district, the court, on the timely motion of a party in interest or

on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties."

Given here that the case was originally filed in the improper district, and that the convenience of the parties would be served, in that the proximity of the Debtor to the venue to attend required meetings for examination would be of greater convenience if that venue were near Debtor's residence, the court will grant the motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Transfer of Venue filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the bankruptcy case is transferred to the Central District of California.

15. [16-20383](#)-C-13 GIANNE/RUBY -ROSE APURADO
JME-1 Julius Engel

MOTION TO VALUE COLLATERAL OF
DENBY SQUARE COTTAGES
HOMEOWNERS ASSOCIATION
2-22-16 [[18](#)]

Thru #18

Final Ruling: No appearance at the March 22, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 22, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Denby Square Cottages Homeowners Association, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3240 Village Plaza Drive, Roseville, California. The Debtor seeks to value the property at a fair market value of \$361,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$361,798.95. Denby Square Cottages Homeowners Association's junior lien secures a loan with a balance of approximately \$3,155. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Denby Square Cottages Homeowners Association secured by a junior lien recorded against the real property commonly known as 3240 Village Plaza Drive, Roseville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$361,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

16. [16-20383](#)-C-13 GIANNE/RUBY -ROSE APURADO MOTION TO AVOID LIEN OF
JME-2 Julius Engel BENEFICIAL FINANCIAL I INC.
2-22-16 [[23](#)]

Final Ruling: No appearance at the March 22, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on February 22, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Beneficial Financial I Inc. for the sum of \$9,729.88. The abstract of judgment was recorded with Placer County on April 17, 2009. That lien attached to the Debtor's residential real property commonly known as 3240 Village Plaza Drive, Roseville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$361,000 as of the date of the petition. The unavoidable consensual liens total \$361,798.95 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$5,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Beneficial Financial I Inc., Placer County Superior Court Case No. MCV33826, recorded on April 17, 2009, with the Placer County Recorder, against the real property commonly known 3240 Village Plaza Drive, Roseville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

17. [16-20383](#)-C-13 GIANNE/RUBY -ROSE APURADO MOTION TO AVOID LIEN OF
JME-3 Julius Engel CITIBANK, N.A.
2-22-16 [[28](#)]

Tentative Ruling: Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on February 22, 2016. Twenty-eight days' notice is required. That requirement was met. However, Movant did not properly serve the affected creditor.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion to Avoid Lien is denied.

The Debtors seek an order avoiding the judicial lien of Citibank, N.A. A judgment was entered against the Debtor in favor of Citibank N.A. for the sum of \$3,172.86. The abstract of judgment was recorded with Placer County on June 30, 2011. That lien attached to the Debtor's residential real property commonly known as 3240 Village Plaza Drive, Roseville, California.

SERVICE ISSUE

Service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h).

The respondent creditor in this case, Citibank, N.A., is insured by the Federal Deposit Insurance Corporation. Thus, the service requirements of Federal Rule of Bankruptcy Procedure 7004(h) regarding federally insured financial institutions apply. The certificate of service for this motion, Dckt. No. 32, does not state that the Motion was sent to Creditor by *certified mail*, and instead avers that the motion was served by first class mail.

On this basis and for the reasons detailed above, the Motion to Avoid the Judicial Lien of Citibank, N.A., is denied without prejudice.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank, N.A., is denied without prejudice.

18. [16-20383](#)-C-13 GIANNE/RUBY -ROSE APURADO MOTION TO AVOID LIEN OF
JME-4 Julius Engel CITIBANK, N.A.
2-22-16 [[33](#)]

Tentative Ruling: Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on February 22, 2016. Twenty-eight days' notice is required. That requirement was met. However, Movant did not properly serve the affected creditor.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion to Avoid Lien is denied.

The Debtors seek an order avoiding the judicial lien of Citibank, N.A. A judgment was entered against the Debtor in favor of Citibank N.A. for the sum of \$5,015.10. The abstract of judgment was recorded with Placer County on May 18, 2011. That lien attached to the Debtor's residential real property commonly known as 3240 Village Plaza Drive, Roseville, California.

SERVICE ISSUE

Service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h).

The respondent creditor in this case, Citibank, N.A., is insured by the Federal Deposit Insurance Corporation. Thus, the service requirements of Federal Rule of Bankruptcy Procedure 7004(h) regarding federally insured financial institutions apply. The certificate of service for this motion, Dckt. No. 37, does not state that the Motion was sent to Creditor by *certified mail*, and instead avers that the motion was served by first class mail.

On this basis and for the reasons detailed above, the Motion to Avoid the Judicial Lien of Citibank, N.A., is denied without prejudice.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank, N.A., is denied without prejudice.
